

Factors that courts consider when determining whether a penalty is criminal in nature include: (1) "whether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of scienter"; (4) "whether its operation will promote the traditional aims of punishment—retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an alternative purpose to which it may rationally be connected is assignable for it"; and (7) "whether it appears excessive in relation to the alternative purpose assigned." However, Congress' designation of a penalty as "civil" creates a presumption which must be overcome by clear evidence to the contrary. Thus, civil penalties are not typically found to be criminal in nature. For example, in *Hudson v. United States*, the U.S. Supreme Court held that monetary assessments and an occupational debarment order did not implicate the Double Jeopardy Clause, because neither type of penalty constituted a "criminal punishment."

Regardless of the nature of the penalty sought, the Double Jeopardy Clause does not bar a subsequent action if no more than preliminary proceedings commenced in the prior action. Typically, an action must have reached at least the stage where jury members have been sworn (in a jury trial) or where the first evidence has been presented to the judge (in a bench trial).

APPLICATION TO A SUBSEQUENT SUIT AGAINST THE NEW BLACK PANTHER PARTY FOR SELF-DEFENSE OR ITS MEMBERS

In January 2009, the U.S. Department of Justice filed a civil suit in a U.S. district court against the New Black Panther Party for Self-Defense and three of its members. The suit was brought by the Department's Civil Rights Division pursuant to the Voting Rights Act of 1965, 42 U.S.C. §1973 et. seq., which prohibits intimidation of "any person for voting or attempting to vote" and authorizes the Attorney General to bring civil actions to obtain declaratory judgment or injunctive relief to prohibit such actions. The Department alleged that members of the Party had intimidated voters and those aiding them during the November 2008 general election and sought an injunction banning the Party from deploying or displaying weapons near entrances to polling places in future elections. However, after the Department obtained an injunction barring one member's future use of weapons near polling places, it voluntarily dismissed its suit against the Party and the other members.

For two reasons, it appears likely that the Double Jeopardy Clause would not prohibit the Justice Department from bringing a similar suit on the same or similar grounds against at least the Party and the individual members for whom the previous suit was dismissed. First, it is likely that a court would find that the injunctive relief sought in the previous action constitutes a civil, rather than criminal, punishment.

Although Congress' designation of the injunctive relief actions as a civil penalty is not ultimately dispositive, it is unlikely, based on the seven factors noted previously, that injunctive relief sought by the Justice Department would be viewed as sufficiently criminal in nature so as to overcome the presumption in favor of accepting Congress' characterization. Most importantly, the injunctions seem to have been primarily designed to prohibit the use of guns at polling places for the purpose of implementing the purposes of the Voting Rights Act, rather than to impose punishment on the defendants.

Second, because the United States voluntarily dismissed its suits against the Party and two of the three individual members before those defendants had filed an answer or motion to dismiss the suit, the previous action had not moved sufficiently beyond preliminary steps so as to implicate the Double Jeopardy Clause. With respect to the one member against whom an injunction was obtained, this second factor would not apply. However, due to the likely characterization of the injunction as a civil penalty, it remains unlikely that a subsequent action would be barred.

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It is imperative that we protect all Americans' right to vote. This is sacrosanct on an inalienable right of any democracy. The career attorneys and the appellate division within the Department sought to demonstrate the Federal Government's commitment to protecting this right by vigorously prosecuting any individual or group who seeks to undermine this right. The only legitimate course of action for the trial team is to bring the case again and allow our Nation's justice system to work as it was intended.

And to see it again, look for it in your own eyes. Look at [www.electionjournal.org](http://www.electionjournal.org).

IMAC, NOT THE SILVER BULLET IT WAS PROMISED TO BE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. PRICE) is recognized for 5 minutes.

Mr. PRICE of Georgia. Mr. Speaker, before I came to Congress I spent 20-plus years as a physician taking care of folks in the north Atlanta area, so this whole debate about the health care bill, there are many aspects of it that give me great concern. And the fact of the matter is, Mr. Speaker, there are many aspects of it that give the Nation great concern.

So whether it's the government-run program or the takeover of health care or whether it's the potential for huge mandates from the Federal Government, many aspects point to areas of different concern for the American people. And one of them is the issue of rationing, the issue of whether or not the Federal Government should be deciding to what extent which Americans receive medical care.

So earlier this year when there was a proposal that was passed in this House and in the Senate signed by the President for something called the Comparative Effectiveness Research Council, fancy name for a potential rationing board, many people voiced concerns about that, as did I.

And what we heard from the other side of the aisle, the majority party, the Democrats, they said, Don't worry about that. There will be congressional oversight. Congress will be able to hold their feet to the fire. Well, Mr. Speaker, what's now come out is that may not be the case.

The IMAC program, or the Independent Medicare Advisory Council, is

a proposal that is being added to the current health care bill that would create a new Presidentially appointed board empowered to make recommendations on cost savings proposals. These are very, very personal medical decisions that we're talking about here, and cost savings proposals oftentimes means rationing.

This proposal in the health care bill right now would eliminate all congressional oversight of the Medicare program and put it in the hands of, you guessed it, the White House and the President. It creates a new executive branch agency with unelected board members appointed by the President to make recommendations on the reductions in Medicare payment levels, reimbursement for providers, potentially refusing to pay for services or care prescribed by doctors as they are deemed not to be "cost efficient." That's the language, Mr. Speaker.

The bill says that the reforms must "either improve the quality of medical care received by the beneficiaries of the Medicare program or," not and, "improve the efficiency of the Medicare program's operation."

Mr. Speaker, this is extremely concerning. This Congress has created the Comparative Effectiveness Resources Board that will have the power to ration care based on cost or quality. It would make the board's recommendations binding in the absence of action by Congress within 30 days if the President approved the recommendation.

Now, many Members of Congress are concerned about payment rates in rural parts of the country, yet this board eliminates State and community input into the Medicare program by rendering irrelevant the influence of local Medicare Carrier Advisory Communities, or MCACs, to develop and implement policies expressly applicable to their patient population.

Further, it would reduce the availability of patient advocacy groups to implement new policies that would improve the health care of our Nation's seniors.

The real concern as a physician is that nonmedical people will be making medical decisions. It's a terrible idea. It's not what the American people want, and they are actually waking up to the proposal that's before Congress right now. And that's why you see the numbers of support across this land decreasing.

Let's move in a positive direction. There is a positive direction, and that is to allow quality decisions, medical decisions to be made between patients and their families and caring and compassionate physicians. It's a simple way to do it, not put it in the hands of a bureaucrat, not put it in the hands of the White House, not put it in the hands of the President. Let patients and doctors decide.

Mr. Speaker, that's the right way. Mr. Speaker, that's the American way.

**SINGLE-PAYER, NOT-FOR-PROFIT  
HEALTH CARE SYSTEM**

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. KUCINICH) is recognized for 5 minutes.

Mr. KUCINICH. Mr. Speaker, I've listened to the health care debate, as all Members have, for the last few months. And what's very interesting about it is that in this debate, we've essentially talked past the single most effective way to reduce costs and to provide health care for all Americans, and that is to create a single-payer, universal not-for-profit health care system.

Such a system is envisioned in and provided for in H.R. 676, Medicare for All, a bill that I had the privilege of writing with JOHN CONYERS of Michigan, a bill that is supported by 85 Members of Congress, by hundreds of community organizations and labor unions, by over 14,000 physicians, and a bill which represents an idea whose time has come.

Some basic facts require discussion when we're speaking about our health care system. And that is that we spend about \$2.4 trillion on health care in America, all spending. That amounts to about 16 to 17 percent of our gross domestic product. Clearly health care is a huge item in the American economy.

If all of that money, all of that \$2.4 trillion went to care for people, every American would be covered. But today, not every American is covered. As a matter of fact, there are 50 million Americans without health insurance and another 50 million underinsured. Why is it in this country which has so much wealth in this country, which has given so much of its wealth to people at the top, we can have 50 million Americans without insurance? By and large, it's because people cannot afford private insurance.

Why not? Well, it's very simple. When you look at the fact that an individual can pay \$300 to \$600 a month or more for a premium, when you look at the fact that a family can pay \$1,000, \$2,000 a month or more for a health care premium, when you consider that a family budget cannot in any way countenance the kind of health care expenses that most families can run into, when you understand that any family can lose its middle class status with a single illness in that family, you come to understand the dilemma that we have in America.

Why isn't health care a basic right in a democratic society? Why do we have a for-profit health care system? I will tell you why. Because out of that \$2.4 trillion that is spent every year in health spending, \$1 out of \$3, or \$800 billion a year, goes to the activities of the for-profit system for corporate profits, stock options, executive salaries, advertising, marketing, the cost of paperwork; 15 to 30 percent in the private sector as compared to Medicare's 3 percent.

This is what this fight is about in Washington. This is why the insurance

industry is hovering around Washington like a flock of vultures. \$800 billion a year is at stake. And so they will do anything that they can to be part of this game so that the government can continue to subsidize insurance companies one way or another.

One out of every \$3 goes for the activities of the for-profit system. If we took that \$800 billion a year and put it into care for everyone, we'd have enough money to cover every American. Not just basic health care, with doctor of choice, but dental care, mental health care, vision care, prescription drugs, long-term care, all would be covered. Everything.

People say how is that possible? It's because we're already paying for the universal standard of care. We're just not getting it.

**GET 'ER DONE**

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from Ohio (Mr. LATOURETTE) is recognized for 60 minutes as the designee of the minority leader.

Mr. LATOURETTE. I thank the Speaker for the recognition and thank the minority leader for this hour.

I'm going to be joined by my good friend, Mr. NUNES, from California and Mr. McCOTTER, who is on his way.

I want to talk tonight, Mr. Speaker—most folks in America recognize the picture to my left. It's Larry the Cable Guy. And if you watch Larry the Cable Guy, his line is get 'er done. And get 'er done is a good way to entertain somebody in a movie. I would suggest it's not such a good way to run the United States of America.

Sadly, since the beginning of this year, we have had a majority in this House and in the other body and at the other end of Pennsylvania Avenue that has taken the attitude of just get 'er done. And that can lead sadly to some unfortunate consequences.

The first get 'er done was we were told we had to have an economic stimulus package spending \$789 billion of taxpayer money by President's Day. It was very important that the President of the United States have the opportunity to sign this bill by President's Day. So the White House's message to the Congress was get 'er done. And the leadership of this House got it done.

Sadly, they were embarrassed because included—and we're going to talk a little bit later in the hour—in the bowels of that stimulus package, which, by the way, was 1,100 pages long and Members of the House got 90 minutes to read it so I doubt many people read it—so people were embarrassed because they didn't read the bill to find out that in the bill was an authorization to give the insurance company AIG, which has received more, billions and billions of dollars, from the taxpayer, bonuses totaling \$173 million.

Well, then the next get 'er done came along—and everybody knows we have a

problem with the automobile industry in this country. And rather than wrapping up their affairs and going through a bankruptcy the old fashioned American way, the message from the White House was we gotta get 'er done in 40 days. Can you imagine a 40-day bankruptcy for Chrysler, the third largest automobile manufacturer in this country and for General Motors, the largest.

And the get 'er done there has been a lot of collateral damage. We have seen plants all across the country closed; we have seen about 50,000 auto workers about to be thrown out of their jobs. We have seen parts suppliers not get paid for manufacturing and making the parts that go into the cars. And we will talk a little bit later about the car dealers. Some brainiac decided that car dealers were a problem in this country and so therefore we have had to get 'er done; we had to close about 3,000 auto dealerships in this country, and we're going to talk about that, too.

□ 1500

But, again, just like the economic stimulus bill, get 'er done is not really a good way to run the country because the other collateral damage that has occurred here recently is there are about 50,000 people that didn't work for General Motors, worked for companies like Delphi, that had their health insurance through General Motors, and guess what? Nobody cared at all about what happens to their health care. So while some of the UAW members that work for General Motors and Chrysler are now secured by stock ownership in the new companies, these 50,000 workers don't have any health care.

Then we came along to what at least in my State is a pretty controversial issue, the cap-and-trade legislation. Some folks on my side called it the "cap-and-tax" legislation. And basically, when fully implemented, I believe it will drive any job that's left in the State of Ohio out of the State of Ohio.

But, again, there's a way to do things here. I've been here for 15 years, and the way legislation usually works is somebody has an idea. We talk about it. We have hearings. They bring it to the floor. Members who have other good ideas have the opportunity to amend that legislation, and then we vote on it. Well, cap-and-trade, sadly, came to the floor, and at 3 o'clock in the morning—I think we voted on the bill on a Friday, and at 3 o'clock Friday morning, in a 1,200-page bill—which, again, nobody had read. They put in 309 new pages at 3 o'clock in the morning, and then we voted on the bill later in the day. And, again, get 'er done.

But we were told we had to get it done by July 4. So the White House called up the House, said get 'er done. Leadership said to their troops, get 'er done, and they got it done. But just like in the stimulus bill, people are embarrassed, because in those 309 pages,